COUNT THE VOTE · THE PETITION PACK · NOVEMBER 2, 2026

YOU STILL HAVE TIME TO CHALLENGE THIS ELECTION.

Any four Victoria voters can ask the Supreme Court of British Columbia to look at how the 2026 election was run. The last day to file is **Friday, November 20**. This pack has what a group needs to do it: who can petition, what the court can decide, the evidence that counts, the forms, the fees, where to file, and where to get free help. It is written in plain language by neighbours, not lawyers, so read the note on advice before you start.

FOUR VOTERS. ONE FORM. ONE DEADLINE: FRIDAY, NOVEMBER 20.

START WITH THE STEPS

DOWNLOAD THE PACK (PDF)

TELL US WHAT HAPPENED TO YOU

THE SHORT VERSION

- **Who.** Any four electors of the City of Victoria, or a candidate, or the chief election officer. One voter alone cannot. An elector is a Canadian citizen, 18 or older, who has lived in British Columbia for six months and lives in the city, or owns property in it.

- **What.** A petition to the Supreme Court of British Columbia under section 153 of the Local Government Act, asking the court to declare the election invalid, or the election of a particular candidate invalid. It is the only way the law allows an election to be challenged.

- **The ground.** That the election "was not conducted in accordance with this Act or a regulation or bylaw under this Act". Not that the result was unfair, and not that the count was wrong:

counting questions belonged to a judicial recount, and that window closed on October 26.

- **The test.** The court will not set an election aside for an irregularity if it is satisfied that the election was run in good faith and the irregularity "did not materially affect the result". Fifteen votes decided the last council seat. That is the number to reach.

- **The evidence.** Sworn statements from voters who did what the Act asked of them and still could not vote: at least as many as the margin, and specific about dates. The report form on this site has already gathered dozens of accounts, and the people who sent them are the first ones to ask.

- **When.** Filed by Friday, November 20, 2026, thirty days after the declaration of October 21. The registry closes at 4 p.m. Serve the City within two days of filing. The hearing is set when you file, between 10 and 21 days later.

- **Where and how much.** The Victoria Law Courts, 850 Burdett Avenue. It costs $200 to file. Swearing an affidavit at the registry costs $40 each; a notary or a lawyer may charge a similar amount. If the petition fails, the court can order the petitioners to pay the City's legal costs, and that can run to thousands of dollars.

- **While it is pending.** The elected candidates take office as normal. The ballots and voting records, which the Act says must be destroyed after December 16, must be kept until the court decides.

This is information, not legal advice

We are neighbours, not lawyers. Everything here comes from the Act, the court's own rules and forms, and what the City has said, each with its source at the end of the page. The law is quoted word for word where it matters. But a petition is a court proceeding with real consequences, and the people in it should talk to a lawyer before they file. Free and low-cost ways to do that are below. If you are putting a group together, tell us, so we can put you in touch with others.

WHAT HAPPENED, IN THE RECORD

The full account, with every source, is on the Count the vote page. The facts that matter to a petition, all from the City's own statements:

- 3,435 people asked for a mail ballot. About 2,300 of those packages sat undelivered in a Canada Post facility for up to five business days. Canada Post says the mailing service the City chose needed a form that was never filed; the City says it was not told.
- The City's chief election officer has said the City called Canada Post on October 7 and learned then that more than 2,000 packages were undelivered. The City told voters on October 13, the day after Thanksgiving and four days before the election.
- 2,007 mail ballots were counted, against 2,685 in 2022. 55 arrived after the close of voting and were not counted. By the City's own figure of about 71 per cent of applicants having voted by mail or in person, roughly 1,000 people who asked to vote by mail have no counted vote.
- On election day, connectivity failed at voting places from 6:45 a.m. The City has not said how many voters left a line without voting.
- The eighth and last council seat was decided by 15 votes. Five votes separated third and fourth place for CRD director. The official results, declared on October 21, carry the same numbers.
- The City has not published an accounting of the mail ballots: how many packages went out and when, how many came back, how many were rejected, how many applicants voted another way.

WHO CAN PETITION, AND AGAINST WHAT

Section 153 of the Local Government Act is the whole of the law on this. In its own words:

(1) The right of an elected candidate to take office or the validity of an election may not be challenged except by an application under this section.

(3) The time limit for making an application is 30 days after the declaration of official election results under section 146.

(4) An application may be made only by a candidate in the election, the chief election officer or at least 4 electors of the municipality or electoral area for which the election was held.

(5) An application may be made only on one or more of the following bases: (a) that a candidate declared elected was not qualified to hold office...; (b) that an election should be declared invalid because it was not conducted in accordance with this Act or a regulation or bylaw under this Act; (c) that an election or the election of a candidate should be declared invalid because section 161 [vote buying], 162 [intimidation] or 163 (2) (a) [voting when not entitled] was contravened.

(6) As a restriction on subsection (5) (b), an application may not be made on any basis for which an application for judicial recount may be or may have been made.

(7) At the time the petition commencing an application is filed, the court registry must set a date for the court to hear the application, which must be at least 10 days but no later than 21 days after the date the petition is filed.

(8) As soon as practicable, but no later than 2 days after a petition is filed, the person making the application must serve the petition and the notice of hearing on the municipality or regional district for which the election was held.

What that means for a group in Victoria: the basis is (5)(b), that the election was not conducted in accordance with the Act, the regulations or the City's election bylaw. The question for the court is whether the mail ballot voting and the voting places were run the way the law requires. That is for the petitioners to show, with evidence. Expect the City to answer with section 110 (9) of the Act, which says a mail ballot must arrive before the close of voting "and it is the obligation of the person voting by mail ballot to ensure that the mail ballot is received within this time limit". Your statements have to show that voters did their part and the process failed them anyway.

WHAT THE COURT CAN DECIDE

Section 155 gives the court four choices on an election's validity, and sets the test. Again, the Act's words:

> (2) On the hearing of an application under section 153 regarding the validity of an election, the court may (a) declare that the election is confirmed as valid, (b) declare that the election is invalid and that the offices that were to be filled in the election are vacant, (c) declare that the election of a candidate is invalid and that the office is vacant, or (d) declare that the election of a candidate is invalid and that another candidate is elected in place of that candidate.
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> (3) The court must not declare an election invalid by reason only of an irregularity or failure to comply with this Act or a regulation or bylaw under this Act if the court is satisfied that (a) the election was conducted in good faith and in accordance with the principles of this Act, and (b) the irregularity or failure did not materially affect the result of the election.

"Materially affect the result" is the heart of it. BC courts decide it with the "magic number" test from Opitz v. Wrzesnewskyj (Supreme Court of Canada, 2012): count the votes the irregularity touched and set that number against the margin of victory. If it equals or exceeds the margin, the result is taken to be materially affected, and the court can set the election aside. It is not automatic: in 2024 a BC court confirmed a 20 to 19 by-election in which one ineligible vote had been cast, because the losing candidate told the court he would not run again (Area E of Central Coast Regional District). In Victoria the margin for the last council seat is 15. A petition that proves that at least 15 people were kept from voting by the way the election was run has a case to put. A petition that proves fewer does not, however strong the feelings. That is why the evidence section matters more than any other.

Two things in the petitioners' favour. First, BC courts have held that once the petitioners prove an irregularity, it is for the City to prove that it did not materially affect the result, not for the petitioners to prove that it did (Sadler v. Gibsons, 2009; Duperron v. School District No. 53, 2017; Alberni-Clayoquot Regional District, 2019). Second, the margins in the decided cases are small. In the Alberni-Clayoquot case, 13 people voted in the wrong area, the margins were 11 and 7, and the court declared both elections invalid and ordered new ones. In Drummond v. Powell River (2019), four people voted who were not entitled to, the margin for the last council seat was two, and the seat was declared vacant; the City paid the petitioner's costs. And on September 18, 2026, in Sinclair-Desgagné v. Canada, the Supreme Court of Canada annulled a federal election decided by one vote. An

Elections Canada employee had printed the wrong postal code on the return envelopes for mail-in ballots and did not correct it for over three weeks; one voter's ballot came back undelivered and was never counted. The Court held that this was "a serious administrative error and therefore an irregularity", even though nobody had acted dishonestly, and that it affected the result "by improperly preventing an elector from voting". It is federal law, but BC courts follow the same test, and it is the closest case to Victoria's.

Two cautions from the same cases. In Duperron, a school district had held one advance poll instead of two; the petitioner proved the irregularity, but the district satisfied the court that a second poll would not have changed the result, and the petition was dismissed (with no costs against her, because she had brought it in good faith). And in Sadler, complaints that were really about how ballots were counted were thrown out, because counting is a matter for a judicial recount, and the Act bars a petition on any ground a recount could have dealt with. Keep the petition to voters prevented from voting and to how the voting was run.

Two more things the Act says. Under section 157, the candidates declared elected take office and act in it unless and until the court declares otherwise. Under section 156, if the court declares the election invalid, the City must pay the petitioners' costs; in every other case, "the costs of an application are in the discretion of the court", which is the risk described below.

THE EVIDENCE: SWORN STATEMENTS

A petition is decided on affidavits: written statements, sworn or affirmed before a commissioner for taking affidavits, a notary public or a lawyer. The court reads them; nobody testifies in person unless the court orders it. What each voter's statement needs, in the voter's own words and with dates:

1. Full name and street address, and that the person was an elector of the City of Victoria on October 17, 2026.
2. When and how they applied for a mail ballot, and why: away as planned, mobility, illness, caring for someone, work.
3. When the package arrived, or that it never did. Keep the envelope: its postmark is evidence.
4. What they did to return it, if they could, and what the City told them when they called or wrote.
5. Why they could not vote in person on October 17 or at an advance opportunity, with dates. A reason tied to the delay counts. A reason that was the voter's own choice counts for little.

6. For a voter who went to a voting place: which one, when they arrived, what officials said, when they left, and that they did not vote elsewhere.
7. That no vote of theirs was counted.
8. That they have kept the envelope and any letter from the City, and will produce them.

Our affidavit template (Word) follows the court's Form 109 and walks through those points. The court registry at 850 Burdett Avenue swears affidavits for $40 each; notaries and lawyers do the same for a fee. Bring photo identification and the envelope. Attach the envelope and any letter from the City as exhibits, marked and signed by the commissioner. A short statement that is true on every line is worth more than a long one.

How many? At least 15 for the last council seat, and more is better. The report form on this site has been collecting accounts since October 18; people who sent one and said they would swear a statement are the place to start, and we will connect a petition group with them, with each person's agreement.

Two rules of evidence worth knowing. An affidavit for a petition hearing must say what the person knows first-hand, not what they were told. And numbers have to be in evidence too: the City's figures of 3,435 requested and 55 late, its notice of October 13, the declaration of results and the news stories that carry its statements go into an affidavit as exhibits, because the court will not take them from a speech at the hearing (that is what sank the statistics in the Alberni-Clayoquot case).

STEP BY STEP

1. **Find your four.** Four electors of the City of Victoria who are prepared to put their names on a court document, and prepared for the risk on costs described below. Agree who is the contact, and one street address in British Columbia for the court and the City to send documents to (the "address for service").
2. **Gather the statements.** Aim to have them sworn by Friday, November 13, a week before the deadline. Use the template, and have each one sworn in front of a commissioner, notary or lawyer.
3. **Get advice.** The free and low-cost options are below. Have someone with court experience read the petition before it is filed. The Justice Education Society's guides on petitions (https://supremecourtbc.ca/civil-law/getting-started/petitions-basics) and starting a petition (https://supremecourtbc.ca/civil-law/getting-started/starting-a-petition) are written for people doing this themselves.

4. **Write the petition.** The court's Form 66 has four parts: the orders you ask for, the facts, the law, and the list of affidavits. Our petition outline (Word) follows the form and explains every blank. Name as respondents the City of Victoria, its chief election officer, and everyone whose interests the orders could affect: if you ask the court to declare the council election invalid, that is every councillor declared elected, not only the last one; if you challenge one seat, it is that councillor. Ask, in the orders sought, that every ballot and record of the election be preserved until the petition is decided.

5. **File it.** At the Supreme Court registry, Victoria Law Courts, 850 Burdett Avenue, Victoria, V8W 9J2, open 9 a.m. to 4 p.m. Monday to Friday. Bring the petition, the affidavits and at least three copies of everything: one is filed, the rest are stamped for service. The filing fee is $200. Tell the registry it is an application under section 153 of the Local Government Act: the Act requires the registry to set the hearing date when you file, between 10 and 21 days later, and to issue the notice of hearing (Form 68). In one past case a registry refused the notice and told the petitioner to file an application on short notice instead; the court later excused it, but it cost time, so ask politely and point to section 153 (7). Documents can also be filed online through Court Services Online with a Basic BCeID or a BC Services Card, for $7 a filing on top, but anything submitted after 4 p.m. counts as filed the next business day, and after 4 p.m. on November 20 that is too late. If you can, file earlier in the week: a Friday filing puts the two-day service deadline on the weekend.

6. **Serve the City within two days.** The Act requires the petition and the notice of hearing to be served on the municipality no later than two days after filing, and the court's rules require personal service of a petition. For a city, that means leaving the stamped copies of the petition, the affidavits and the notice of hearing with the city clerk, or with the mayor, at City Hall, 1 Centennial Square, by 4 p.m. for it to count that day. The court's rules also require personal service on everyone whose interests the orders could affect, so hand each councillor named as a respondent their own copy, in person. Then swear an affidavit of personal service (Form 15) saying who delivered what, to whom, where and when, and file it.

7. **Prepare for the hearing.** The respondents will file responses and their own affidavits. The hearing is in chambers, before a judge, on the documents, usually at 9:45 a.m. on a petition day; if your time estimate is over two hours, the court's scheduling office sets it. Between five and two business days before the hearing you must deliver a petition record to the registry: a binder with a cover page, an index, the filed petition, every response and every affidavit to be referred to, and, if you like, a draft order and a written argument. Without it the petition comes off the list. Serve the index on each respondent two business days before. One wrinkle: the court's rules give a respondent 21 days to respond, which cannot fit inside a hearing set 10 to 21 days out, so the petition should ask the court to shorten the time for response, and the registry will say how. At the hearing someone has to stand up and say what orders you want

and why the evidence meets the test in section 155 (3). This is the point where a lawyer earns their fee.

8. **Tell us.** A petition filed is public. Once one is filed, this network will say so, and will put every account it holds, with each person's agreement, at the petitioners' disposal.

WHAT IT COSTS, AND WHAT YOU RISK

- $200 to file the petition. $40 for each affidavit sworn at the registry, or a notary's or lawyer's fee. Photocopies. Nothing to set the hearing date.

- No court fee for the hearing itself: the fee schedule charges nothing for the first three days of a hearing, and a petition like this is heard in a day or less.

- The real risk is costs. If the petition fails, the court can order the petitioners to pay the City's legal costs, which for a hearing of this kind can reach thousands of dollars, and the four petitioners are each on the hook. In two BC election petitions that failed, Patterson v. Kent (2008) and Duperron (2017), the courts declined to order costs against petitioners who had acted in good faith; in a different kind of case, 39 electors who lost were ordered to pay costs. If the petition succeeds, the Act says the City must pay the petitioners' costs, as Powell River did in 2019. Everyone who signs should understand this before they sign.

- A person who cannot afford the court fees can ask the court to waive them: a requisition (Form 17) with a draft order (Form 79) and an affidavit about their means (Form 80). That covers the court's fees, not the other side's costs.

THE DATES

DATE	WHAT	WHERE IT COMES FROM
Wednesday, October 21	The City declared the official results.	Local Government Act, s. 146
Monday, October 26	The window to apply for a judicial recount closed.	s. 148 (3)
Friday, November 13	Our suggestion: have the statements sworn by now.	A week's margin
Friday, November 20, 4 p.m.	The last day to file a petition, thirty days after the declaration.	s. 153 (3); the registry's hours
Two days after filing	The City must have been served with the petition and the notice of hearing.	s. 153 (8)
10 to 21 days after filing	The hearing, on the date the registry sets when you file.	s. 153 (7)
Wednesday, December 16	The ballots, voting books and voters lists are destroyed after this date, unless a petition is pending or a court orders otherwise.	s. 160 (8) and (9)

THE PACK

- This page as a PDF, to print and hand to the people you are asking.
- The affidavit template (Word), in the court's Form 109, with every point a voter's statement needs.

- The petition outline (Word), in the court's Form 66, with the blanks explained.

- The court's own forms, as published in the Supreme Court Civil Rules: Appendix A (https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/168_2009_04) holds Form 66 (the petition), Form 67 (the response), Form 68 (the notice of hearing), Form 109 (the affidavit) and Forms 79 and 80 (the fee waiver).

FREE AND LOW-COST HELP

- **Access Pro Bono, Summary Advice:** 604-878-7400. Up to thirty minutes of free advice from a lawyer, for people on low and modest incomes, civil matters included.

- **Access Pro Bono, Legal Referral Service:** 604-687-3221, 8:30 a.m. to 4:30 p.m., Monday to Friday. Fifteen to thirty minutes with a lawyer, free; a $25 booking fee applies if the household earned $100,000 or more last year, or if you book online. Ask for a lawyer who does civil litigation or judicial review.

- **Access Pro Bono, Everyone Legal Clinic:** 778-200-4478, lower-cost representation in civil matters.

- **The Justice Education Society's Supreme Court guides** at supremecourtbc.ca (https://supremecourtbc.ca/): plain-language guides to petitions, affidavits and chambers hearings, written for people without a lawyer.

- **The registry** at 850 Burdett Avenue (250-356-1478) can tell you what to file and what it costs. It cannot give legal advice.

- **Us.** sustainablevictorianetwork@gmail.com. We can connect a group with the voters who have sent us their accounts, and with each other.

DID YOUR MAIL BALLOT COME LATE, OR NEVER? YOUR STORY IS THE EVIDENCE.

TELL US WHAT HAPPENED

DOWNLOAD THE PACK (PDF)

TEXT A FRIEND

▶ **Sources**